

April 2 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT NO.
DA 10-0142

JIM NUGENT
City Attorney
SUSAN A. FIRTH
Chief Civil/Administrative Attorney
435 Ryman
Missoula MT 59802
(406) 552-6020
attorney@ci.missoula.mt.us

KATHY HEFFERNAN, ROBIN CAREY, DAVID
HARMON and NORTH DUNCAN DRIVE
NEIGHBORHOOD ASSOCIATION, INC.,

Plaintiffs and Appellees,

vs.

MISSOULA CITY COUNCIL, CITY OF MISSOULA;
and JOHN ENGEN, Mayor,

Defendants and Appellants,

and

MUTH-HILLBERRY, LLC,

Intervenor-Defendant and Appellant.

FILED

APR 02 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

NOTICE OF APPEAL

NOTICE is given that Missoula City Council; City of Missoula; and John Engen, Mayor; the Appellants above-named and who are the Defendants in that cause of action filed in the Fourth Judicial District Court,

in and for the County of Missoula, as Cause No. DV-08-84, hereby appeals to the Supreme Court of the State of Montana from the final judgment entered in such action on the 16th day of March, 2010 and from the following Order of the District Court:

1. Order dated May 21, 2008 denying Defendants' Motions to Dismiss and Strike (specifically denying City of Missoula's Motion to Dismiss and Strike the individual plaintiffs for lack of standing);
2. Opinion and Order dated January 14, 2009 Denying Defendant City's October 16, 2008 Cross-Motion for Summary Judgment;
3. Order dated July 31, 2009 granting Plaintiffs' second Motion to Strike Affidavits;
4. Order dated February 24, 2010 granting Plaintiffs' Motion for Summary Judgment and denying Missoula City Council and Mayor John Engen's Motion for Summary Judgment.

APPELLANT FURTHER CERTIFIES:

1. That this appeal is NOT subject to the mediation process required by M.R.App.P.7.
2. That this appeal is not an appeal from an order certified as final under M.R.Civ.P.54(b).
3. That the notice required by M.R.App.P.27 has been or will be given within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.
4. That all available transcripts of the proceedings in this cause have not been ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M.R.App.P.8(3) contemporaneously with the filing of this notice of appeal. No transcripts are necessary for this appeal.
5. That the City of Missoula is a local government not required to pay a filing fee prescribed by statute.

Dated this 1st day of April, 2010.



SUSAN A. FIRTH
CHIEF CIVIL/ADMINISTRATIVE ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, and each attorney of record in the above-referenced District Court action, as follows:

Clerk of the District Court
Fourth Judicial District Court
200 W. Broadway
Missoula MT 59802

David K.W. Wilson Jr.
Reynolds Motl and Sherwood
401 North Last Chance Gulch
Helena, MT 59601

Donald V Snaveley
Snaveley Law Firm
PO Box 16570
Missoula MT 59808

Dated this 1st day of April, 2010.



SUSAN A. FIRTH
CHIEF CIVIL/ADMINISTRATIVE ATTORNEY

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

2010-027

April 1, 2010

Ed Smith
Clerk of the Montana Supreme Court
P. O. Box 203003
Helena, MT 59620-3003

Re: Supreme Court No. DA 10-0142
Heffernan et al v. Missoula City Council et al

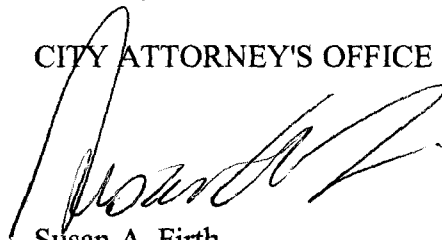
Dear Mr. Smith:

Enclosed for filing is the original Notice of Appeal by the Missoula City Council, City of Missoula and John Engen, Mayor in the above identified proceeding.

Thank you.

Sincerely,

CITY ATTORNEY'S OFFICE



Susan A. Firth
Chief Civil/Administrative Attorney

cc: District Court
Don Snavely
Kim Wilson